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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

7044-X06-010

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on _____

Signature _____

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name _____

Application Number

10/596,996

Filed

July 5, 2006

First Named Inventor

Itshak Ben Yesha

Art Unit

3766

Examiner

Luther G. BEHRINGER

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

/Paul D. Bianco/

Signature

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

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May 26, 2009

Date

Registration number if acting under 37 CFR 1.34 _____

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Attachment to Pre-Appeal Brief Request for Review

Under the provisions provided in the Official Gazette Notice of July 12, 2005, applicant requests panel review in view of omissions of essential elements needed to support a prima facie rejection.

More specifically, in the Final Office Action of December 23, 2008, independent claims 11 and 22 stand rejected as obvious based in part on the secondary reference supposedly disclosing the subtraction of two specified independently obtained signals. However, the Office Action does not indicate any such subtraction of signals, so the rejection should be withdrawn.

Applicant explains the context of the unaddressed subject matter as follows:

Independent claim 11 describes a system having "at least two independent sensors," and independent claims 22 describes a method including both "sensing using a *first* pressure sensor" and "sensing using a *second* pressure sensor" (*emphasis added*). For a prior art disclosure the concurrent use of two different sensors, the rejection relies on the following single sentence Miller (U.S. Pat. No. 5,796,340):

This analysis of the forces on a resting or sleeping human applies to pressure sensors other than mattresses such as sensors placed under or incorporated in the legs or a bed or crib.

(Col. 3, lines 27-30.) Note the absence of the teaching of multiple sensors under a single bed or crib. Although the word "sensors," in the plural form, is used, it follows the recitation of "pressure sensors other ..., " again in the plural form. In view of the preceding text in the same paragraph, the quoted text is more suggestive of a single sensor placed

under the crib or bed, and that sensor being of a type of sensors, plural, other than the mattress type.

However, the present submission is based on the impropriety of the use of the secondary reference, so the arguments that follow are based on the disputed assumption that Miller teaches the *concurrent* use of two pressure sensors. For the record, applicant does not agree that Miller provides such teaching.

Independent claim 11 further specifies that its system has a mechanism for "subtracting" the two above-quoted signals, and independent claims 22 further specifies that its method includes "subtracting" the two above-quoted signals. The claims additionally specify that the difference from this subtraction exhibits horizontal mass movements attributed to blood circulation. According to the Office Action, Fraden (U.S. Pat. No. 4,405,527) teaches "creating" a signal that exhibits horizontal mass movements attributed to blood circulation.

However, a prior art teaching of "creating" a certain signal is not a teaching of "subtracting" two inputs to obtain such a signal as claimed. Thus, the rejection is not unjustified.

As supposed support for the rejection, the Office Action includes a cite to:

However, the electrode configuration shown in FIG. 5 is also capable of detecting horizontal translation of the center of gravity due to respiratory activity as well as substantially vertical displacement due to cardiac activity.

(Col. 5, line 67, through col. 6, line 3.) This disclosure fails to teach the cited claim feature for at least two reasons: (1) the quoted text does not teach subtracting two signals; and (2) the quoted text associates the horizontal

translation of the center of gravity due to respiratory activity instead of to cardiac activity (blood circulation) as claimed.

Fig. 5 of Fraden does not teach multiple sensor signals, so it cannot teach the claimed subtraction. Instead Fig. 5 teaches a single sensor using a single component of piezoelectric material 18a. Multiple elements of spaced-apart electrode configuration 40 are segments all electrically connected together producing a single electrode pair (col. 6, lines 9-11). There are two spaced-apart electrode configurations on opposite sides of the piezoelectric material (note the analogous embodiment of Fig. 4), so the result of movement, even horizontal movement, is a *single* signal. There is no subtraction. The horizontal translation of the center of gravity referenced in the cited text can cause compression in different areas of the piezoelectric material 18a, and the electrodes segments in those areas provide the conducting paths for the electrons from the portion of the piezoelectric material 18a in the particular area of compression, but the signal monitoring means (note the analogous embodiment of Fig. 1) receives a single signal. Thus, there is no subtraction as claimed.

Because the claims specify that the signal associated with the horizontal mass movements and hence the blood circulation is obtained by "subtracting" two particular values, because the rejection relies on a teaching only of "creating" (not "subtracting") a signal related to blood circulation, and because the reference does not even teach the use of two separate sensors as claimed, the rejection cannot be justified and thus should be withdrawn. Further, because the rejections of all pending claims are based in part in the propriety of the rejection of claims 11 and 22, the rejections of all pending claims should be withdrawn.

With the present submission, applicant does not waive additional arguments that the rejections are untenable.

PLEASE CALL the undersigned if that would expedite the prosecution of this application.

Respectfully submitted,

Date: May 26, 2009

By: /Paul Bianco /

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